ATTORNEY GENERAL OF MALAYSIA v. MOHD KASSIM MOHD HAMID

HIGH COURT MALAYA, SHAH ALAM
MEOR HASHIMI ABDUL HAMID JC
[CRIMINAL APPEAL NO: BA-42(ORS)(A)-1-09-2019]
10 FEBRUARY 2020

CRIMINAL PROCEDURE: *Appeal – Appeal against coroner's decision – Appeal by Public Prosecutor – Public Prosecutor directed inquest into death – Allegation that Public Prosecutor made premature decision regarding deceased's death and delayed and disrupted continuity and transparency of inquest – Leave for committal proceedings against Public Prosecutor granted by coroner – Whether coroner's decision final order or ruling – Whether appealable – Whether appeal competent – Criminal Procedure Code, ss. 307 & 339*

CRIMINAL PROCEDURE: *Appeal – Appeal against coroner's decision – Appeal by Public Prosecutor – Application to strike out appeal – Public Prosecutor directed inquest into death – Allegation that Public Prosecutor made premature decision regarding deceased's death and delayed and disrupted continuity and transparency of inquest – Leave for committal proceedings against Public Prosecutor granted by coroner – Whether coroner's decision final order or ruling – Whether appealable – Whether appeal premature – Whether plain and obvious case warranting striking out – Whether there was reasonable cause of action – Whether appeal unnecessary and has no prospect of success – Whether appeal frivolous, vexatious and an abuse of process of court – Whether defences unarguable – Whether application to strike out appeal ought to be allowed – Criminal Procedure Code, ss. 307 & 339*

WORDS & PHRASES: *'Decision' – Courts of Judicature Act 1964, s. 3 – Appeal against coroner's decision in granting application for leave to issue committal proceedings against Public Prosecutor – Whether coroner's decision a decision within s. 3 of Courts of Judicature Act 1964 – Whether 'judgment, sentence or order' or ruling – Whether coroner's decision disposed of rights of parties – Whether coroner's decision appealable – Whether s. 307 of the Criminal Procedure Code applicable to govern appeal*

The appellant, in his capacity as the Public Prosecutor under s. 339 of the Criminal Procedure Code ('CPC'), directed an inquest into the death of Muhammad Adib Mohd Kassim ('deceased'), the firefighter who succumbed to his injuries during the riot at the Seafield Sri Mariaman Temple. The inquest proceeded before the coroner, with the presence of representatives from the Ministry of Housing and Local Government, the Fire and Rescue Services Department and the deceased's family ('interested parties'). One Syazlin Mansor ('Syazlin'), was appointed as counsel to hold watching brief on behalf of the interested parties. A pathologist was scheduled to give his

evidence at the inquest but, on the said day, Syazlin withdrew from representing the interested parties and informed the coroner that the pathologist would not continue to give his evidence. The inquest then came to a halt and to clarify matters related to Syazlin's withdrawal, the appellant issued a media release where he said, *inter alia*, '… my officers, who are performing their traditional role as counsel assisting the learned coroner, have informed me that Pn Syazlin Mansor takes an active part in the inquest, often contradicting the positions our DPPs have taken, thus causing embarrassment in her capacity as the Ministry's lawyer' ('paragraph in the media release'). The media release prompted the deceased's father ('respondent') to file an *ex parte* application for leave to issue committal proceedings against the appellant, pursuant to O. 52 r. 3 of the Rules of Court 2012 ('ROC') ('encl. 62'). According to the respondent, (i) the paragraph in the media release, read together with the averment in the DPP's affidavit, meant that the appellant had made a premature decision regarding the deceased's death; and (ii) the appellant had delayed and disrupted the continuity and transparency of the inquest and this tantamount to an interference with the cause of justice. The coroner heard encl. 62 and granted the application ('coroner's decision'). The appellant appealed against the coroner's decision and the respondent filed an application to strike out the appellant's appeal ('encl. 16'). In support of encl. 16, the respondent submitted that the appellant's appeal was incompetent, on the grounds that (i) the ruling made by the coroner was not a final decision and, hence, not appealable; (ii) the rights of the appellant had not been affected or prejudiced in any way, by leave being granted to the respondent, because at the committal proceedings proper, the appellant would have all the rights and opportunities to rebut the respondent's case and defend himself; and (iii) as provided for under O. 52 of the ROC, committal proceeding is a two-stage process. At the leave stage, it was for the respondent to satisfy and prove to the court that there was a *prima facie* case of contempt. Then, if leave was allowed, the appellant, as the intended contemnor, would then have all the rights to defend himself and cast doubts to the respondent's case. The appellant, on the other hand, argued that (i) when the coroner made a finding that the respondent had made out a *prima facie* case and granted encl. 62, the coroner made an order, not a ruling; (ii) the coroner's decision was a decision within s. 3 of the Courts of Judicature Act 1964 ('CJA'); (iii) the appellant's appeal was competent and not premature; and (iv) the appellant's appeal had merits and ought not to be struck out and the right forum to raise this argument was the appeal proper and not in this motion.

Held (dismissing encl. 16):

(1) Section 26 of the CJA provides that the appellate criminal jurisdiction of the High Court shall consist of hearing appeals from subordinate courts and the procedure and rules on appeals to the High Court are

given in Chapter XXX of the CPC. The appellant's appeal was made pursuant to s. 307 of the CPC, concerning the coroner's decision (order). Since the court treated the appeal as a criminal appeal, the provision of the CPC in relation to procedure of appeal was applicable. An appeal lodged under s. 307 of the CPC may be made against any 'judgment, sentence or order' pronounced by a Magistrate or Sessions Court Judge. The phrase 'judgment, sentence or order' means final judgment, sentence or order. An order is a final order in the sense that it is final in effect as in a case of a judgment or a sentence. (paras 31-33)

(2) Under s. 3 of the CJA, the 'decision' appealable means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties. However, under s. 307(1) of the CPC, appeals to the High Court may be filed by any person who is dissatisfied with any judgment, sentence or order pronounced by any subordinate courts. The words 'but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the right of the parties' are not in the said section. (paras 38 & 39)

(3) The provisions under s. 307(1) of the CPC is clear and unambiguous. The canon of interpretation is well-entrenched and the ordinary word and plain language of law must be given its plain meaning. The provisions of s. 307 of the CPC was, therefore, applicable to govern the appellant's appeal. The coroner had decided on encl. 16 and gave an order to grant leave to the respondent to initiate proceedings against the appellant. The said order was pronounced by a subordinate court *ie* a Sessions Court Judge sitting as a coroner. The coroner's decision was within the definition of 'judgment, sentence or order', as stipulated in s. 307(1) of the CPC and, therefore, the appellant had the right to appeal to this court. Unlike the meaning of 'decision', envisaged in s. 3 of the CJA, s. 307 of the CPC emphasises the words 'judgment, sentence or order' that could be appealed to this court. (paras 44 & 49-52)

(4) The respondent ought to have raised a preliminary objection on the ground that the appeal by the appellant was an incompetent appeal as the coroner's decision was not a final order and was not appealable. However, even if the respondent raised such preliminary objection, it would be baseless and would be dismissed. The application by the respondent to strike out the appellant's appeal was misplaced and ought not to be allowed. Courts will only dismiss an action (i) in plain and obvious cases; (ii) where there is no reasonable cause of action; (iii) to avoid unnecessary trial which has no prospect of success; or (iv) the claims are frivolous or vexatious or an abuse of process of court or the

defences are unarguable. The appellant's appeal did not fall under any of the criteria, thus the respondent's application was devoid of any merit. (paras 56-58 & 61)

(5) The coroner's decision, in allowing leave for committal proceedings in encl. 16, (i) was a final order that disposed a cause or matter on its merits. Therefore, it was a 'final order' made and not a 'ruling' in relation to encl. 16; (ii) was not on preliminary issues in relation to the leave's application; (iii) decided on merits of the application and found that a *prima facie* cause of contempt of court was proven and the leave under O. 52 r. 3(1) and (2) of the ROC ought to be granted to the respondent. Subsequently, the coroner's decision that there was a *prima facie* case and leave was therefore granted to initiate committal proceedings against the appellant, was a final order. Since the coroner decided on the merits of encl. 16, the coroner's order was final and appealable to this court. The leave granted by the coroner may be set aside on appeal or by an application to set aside the leave by the intended/proposed contemnor if the requirements to strictly comply with the provisions of O. 52 r. 3(1) and (2) of the ROC were not fulfilled by the respondent. (paras 62-63, 65 & 70)

(6) The appeal by the appellant was competent and hence, appealable. The application by the respondent to strike out the appellant's appeal was dismissed and the appellant's appeal was to proceed forthwith. (paras 78 & 79)

Case(s) referred to:

Ahmad Zubair Hj Murshid v. PP [2014] 9 CLJ 289 FC ***(refd)***

Alliance Investment Bank Sdn Bhd v. Good Quantum Sdn Bhd & Ors [2011] 4 CLJ 861 HC ***(refd)***

Ang Gin Lee v. PP [1991] 2 CLJ 857; [1991] 1 CLJ (Rep) 13 SC ***(refd)***

Arthur Lee Meng Kwang v. Faber Merlin (M) Bhd & Ors [1986] 2 CLJ 109; [1986] CLJ (Rep) 58 SC ***(refd)***

C Vignesh Kumar Chellapah & Anor v. PP [2019] 8 CLJ 591 CA ***(refd)***

Cepatwawasan Group Bhd & Anor v. Tengku Dato' Kamal Ibni Sultan Sir Abu Bakar & Ors [2008] 2 CLJ 620 HC ***(refd)***

Dato' Seri Anwar Ibrahim v. PP [2010] 4 CLJ 265 FC ***(refd)***

Dewan Perniagaan Melayu, Malaysia, Negeri Johor v. Menteri Besar Johor & Ors [2016] 1 CLJ 52 HC ***(refd)***

Duta Arif Sdn Bhd & Ors v. Charterfield Development Corporation Sdn Bhd & Ors [2007] 1 LNS 415 HC ***(refd)***

Karpal Singh Ram Singh v. PP [2012] 5 CLJ 537 FC ***(refd)***

Muhammad Kin Eezaz Abdullah v. PP [2014] 6 CLJ 175 CA ***(refd)***

Nescajaya Sdn Bhd v. Suairah Parigula & Ors [2011] 1 LNS 527 HC ***(refd)***

PCP Construction Sdn Bhd v. Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener) [2019] 6 CLJ 1 FC ***(refd)***

PP v. Mohamed Shahabuddin Mohamed Ali & Ors [2018] 8 CLJ 535 CA ***(refd)***

PP v. Mohd Ezri Azmar Pavel & Anor [2016] 1 LNS 93 CA ***(refd)***

PP v. Ng Wing Fau & Ors [2018] 9 CLJ 707 CA ***(refd)***

PP v. Raymond Chia Kim Chwee & Anor And Another Case [1985] 2 CLJ 457; [1985] CLJ (Rep) 260 FC ***(refd)***
PP v. Tan Tatt Eek & Other Appeals [2005] 1 CLJ 713 FC ***(refd)***
Re Bramblevale Ltd [1970] 1 Ch 128 ***(refd)***
Samsudin Ismail & Ors v. Yeoh Oon Theam & Ors And Another Case [2003] 1 LNS 368 HC ***(refd)***
Sitrac Corporation Sdn Bhd v. Lim Siew Eng [2002] 4 CLJ 463 HC ***(refd)***
Sivakumar Varatharaju Naidu v. Ganesan Retanam [2010] 9 CLJ 825 CA ***(refd)***
Societe Jas Hennessy & Co & Anor v. Nguang Chan (M) Sdn Bhd [2005] 5 CLJ 515 HC ***(refd)***
Syarikat Tingan Lumber Sdn Bhd v. Takang Timber Sdn Bhd [2003] 2 CLJ 177 CA ***(refd)***
Sykt M Mohamed v. Mahindapal Singh Joginder Singh & Ors [1991] 1 CLJ 582; [1991] 4 CLJ (Rep) 16) HC ***(refd)***
Tan Hoo Eng v. PP [2019] 1 LNS 893 CA ***(refd)***
Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC ***(refd)***
Woodsville Sdn Bhd v. Tien Ik Enterprise Sdn Bhd & Ors And Another Appeal [2010] 2 CLJ 858 CA ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 3, 26
Criminal Procedure Code, ss. 307(1), 328, 337, 339
Rules of Court 2012, O. 18 r. 19(1)(a), (d), O. 52 r. 3(1), (2)

Other source(s) referred to:
Bindra's Interpretation of Statutes, p 395

For the appellant - Ambiga Sreenevasan, Zainur Zakaria, Narkunavathy Sundareson, Mankiranjit Kaur Mehinder Singh & Sarah Ho; DPPs
For the respondent/applicant - Mohamed Haniff Khatri Abdulla, Aidil Khalid & Abdul Rahim Sinwan; M/s Mohd Zubir Embong & Assocs

Reported by Najib Tamby

JUDGMENT

Meor Hashimi Abdul Hamid JC:

Background Facts

[1] The appellant in his capacity as the Public Prosecutor under s. 339 of the Criminal Procedure Code ("CPC"), in or about December 2018, directed an inquest to be conducted into the death of Muhammad Adib bin Mohd Kassim (deceased), a firefighter who was gravely injured during the riot at the Seafield Sri Mariaman Temple on 27 November 2018 and passed away on 17 December 2018.

[2] The function of a Magistrate or Sessions Court Judge (the learned coroner) holding an inquest (inquiry) under Chapter XXXII of the CPC is to enquire, when, where, how, and in what manner the deceased came by his death and also whether any person is criminally concerned in the cause of death of the deceased as provided for under s. 337 of the CPC.

[3] The 'cause of death' as defined under s. 328 of the CPC includes not only the apparent cause of death as ascertainable by inspection or post-mortem examination of the body of the deceased but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and as to whether his death resulted in any way from, or was accelerated by an unlawful act or omission on the part of any other person.

[4] The said inquest proceeded before the learned coroner with the presence of representatives from the Ministry of Housing and Local Government, the Fire and Rescue Services Department and the deceased's family whom all were acknowledged as interested parties and therefore allowed to hold watching brief in the inquest proceedings. The said inquest was also assisted by a Deputy Public Prosecutor (DPP) from the Attorney General's Chambers (AGC) who acted as the conducting officer.

[5] The learned coroner however rejected the application by the Seafield Mariaman Temple Task Force ("task force") to be made a party to the inquest proceedings which they subsequently appealed to the Court of Appeal.

[6] The task force's appeal and their application to stay the inquest was fixed for hearing before the Court of Appeal on 15 April 2019. The learned DPP having charge of the inquest affirmed an affidavit dated 3 April 2019 (DPP's affidavit) where he stated therein *inter alia* that the deceased's death was not due to assault by any person. This resulted in the task force withdrawing their appeal and subsequently all related proceedings in the Court of Appeal were struck out.

[7] The said inquest thereafter commenced on 11 February 2019 and proceeded with the calling of witnesses by the conducting officer. Apart from the conducting officer, an advocate and solicitor by the name of Syazlin Mansor was appointed as counsel to hold watching brief on behalf of all the three interested parties in the inquest, ie, the Ministry, the Fire and Rescue Department and the deceased's family.

[8] One of the witnesses at the inquest was Prof Dr Shahrom bin Abdul Majid, an independent pathologist who was scheduled to give his evidence at the inquest on 27 May 2019.

[9] However, what transpired on the said 27 May 2019 was, Syazlin Mansor abruptly applied to withdraw from representing the Ministry, the Fire and Rescue Department and the deceased's family and further informed the learned coroner that Prof Shahrom would not continue to give his evidence.

[10] As a result of Syazlin Mansor's withdrawal, the inquest came to a halt and a case management was fixed on 26 June 2019 to address the issues of parties' representation at the inquest and the continued process of Prof Shahrom's giving his evidence at the inquest.

[11] Syazlin Mansor's abrupt withdrawal caused confusion and raised inevitable speculation as this also resulted in her withdrawing from representing the deceased's family.

[12] Subsequently, the appellant issued a media release dated 28 May 2019 to clarify matters related to the said withdrawal (see pp. 14-16 of the record of appeal vol. 3).

Leave To Issue Committal Proceedings

[13] The respondent/applicant filed an *ex parte* application for leave to issue committal proceedings against the appellant (encl. 62) under O. 52 r. 3 of the Rules of Court 2012. The application was prompted by the appellant's media release dated 28 May 2019 wherein the appellant had said:

> Thirdly, my officers, who are performing their traditional role as counsel assisting the learned coroner, have informed me that Pn Syazlin Mansor takes an active part in the inquest, often contradicting the positions our DPPs have taken, thus causing embarrassment in her capacity as the Ministry's lawyer.

[14] The respondent/applicant alleged that the said paragraph in the appellant's media release dated 28 May 2019, read together with the averment in the DPP's affidavit dated 3 April 2019 (see pp. 93-96 of the record of appeal vol. 3), meant that the appellant had made a premature decision regarding the deceased's death. Further, the respondent/applicant contended that the appellant has delayed and disrupted the continuity and the transparency of the inquest and this tantamount to an interference with the cause of justice and therefore form the basis of the application for leave to initiate committal proceedings against the appellant.

[15] The learned coroner heard the said application by the respondent/applicant as an opposed *ex parte* and on 27 August 2019, granted the respondent/applicant leave to issue committal proceedings against the appellant.

A

Contempt Of Court

[16] Contempt of court may be defined as any act done, which is calculated to bring a court or judge into contempt or to lower his authority or to interfere with the due course of justice or the lawful process of the courts is a contempt of court (per Zulkefli Makinudin J, (as His Lordship then was) in *Societe Jas Hennessy & Co & Anor v. Nguang Chan (M) Sdn Bhd* [2005] 5 CLJ 515).

B

[17] *Oswald's Contempt of Court*, 3rd edn provides that the general definition of contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties' litigants or their witnesses during litigation.

C

[18] The burden of proof in contempt of court proceedings is proof beyond reasonable doubt and His Lordship Lord Denning in *Re Bramblevale Ltd* [1970] 1 Ch 128, *inter alia*, stated that "a contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt".

D

Appellant's Appeal

E

[19] Dissatisfied with the decision of the learned coroner, the appellant on 29 August 2019 filed a notice of appeal against the learned coroner's decision in granting leave to the respondent/applicant to initiate committal proceedings against the appellant.

F

[20] Subsequently, on 24 September 2019, the respondent/applicant filed the application to strike out the appellant's appeal (encl. 16).

[21] During case management on 26 September 2019, this court ruled that the appellant's appeal would be treated as a criminal appeal under the CPC and this court gave directions and fixed dates for the hearing of encl. 16 and the appellant's appeal.

G

[22] The said encl. 16 was heard on 22 November 2019 and this court heard submissions from both learned counsel for the appellant and the respondent/applicant and then reserved judgment to 25 November 2019.

H

[23] The decision of this court was given on 25 November 2019 and this court dismissed the respondent/applicant's application (encl. 16) and held that the appellant's appeal is competent and not premature and therefore it is appealable to this court.

[24] Dissatisfied with the decision of this court in dismissing the respondent/applicant's application to strike out the appellant's appeal, the respondent/applicant filed the present appeal to the Court of Appeal.

I

Cause Papers

[25] The relevant cause papers were filed by the respective parties pursuant to the application to strike out the appellant's appeal, the details of which are as follows:

(i) notice of motion dated 24 September 2019 to strike out the appellant's notice of appeal under s. 3 of the Courts of Judicature Act 1964 and/or O. 18 r. 19(1)(a) and (d) of the Rules of Court 2012 (encl. 16);

(ii) affidavit in support affirmed by the respondent/applicant dated 22 September 2019 (respondent's affidavit in support); and

(iii) affidavit in reply affirmed by Narkunavathy Sundareson dated 8 October 2019 (appellant's affidavit in support).

Submissions By The Respondent/Applicant

[26] The respondent/applicant's application to strike out the appellant's appeal is pursuant to the definition of 'decision' in s. 3 of the Courts of Judicature Act 1964 and/or O. 18 r. 19 of the ROC 2012 which provides as follows:

S. 3 of CJA

'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the right of the parties.

Order 18 rule 19 of the ROC 2012

Striking out pleadings and endorsements (O. 18 r. 19)

(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that:

(a) it discloses no reasonable cause of action or defence, as the case may be;

(b) it is scandalous, frivolous or vexatious;

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under subparagraph (1)(a).

(3) This rule shall, as far as applicable, apply to an originating summons as if were a pleading.

[27] In essence, the respondent/applicant submitted that the appellant's appeal is incompetent and therefore this court should grant order in terms as per the application (encl. 16) on the following grounds:

(i) the respondent/applicant asserts that the ruling made by the learned coroner in allowing the respondent/applicant to commence committal proceedings against the appellant is not a final decision, and hence not appealable;

(ii) the rights of the appellant have not been affected or prejudiced in any way by leave being granted to the respondent/applicant. This is so because at the committal proceedings proper, the appellant will have all the rights and opportunities to rebut the respondent/applicant's case and defend himself; and

(iii) as provided for under O. 52 of the Rules of Court 2012, committal proceedings are a two-stage process. At the leave stage, it is for the respondent/applicant to satisfy and prove to the court that there is a *prima facie* case of contempt. Then, if leave is allowed, the appellant (the intended contemnor) will then have all the rights to defend himself and cast doubts to the respondent/applicant's case.

[28] In the respondent/applicant's submissions, references were made to case authorities like *Karpal Singh Ram Singh v. PP* [2012] 5 CLJ 537; [2012] 5 MLJ 293; *Muhammad Kin Eezaz Abdullah v. PP* [2014] 6 CLJ 175; *PP v. Mohd Ezri Azmar Pavel & Anor* [2016] 1 LNS 93; [2016] MLJU 1714; and *Dewan Perniagaan Melayu, Malaysia, Negeri Johor v. Menteri Besar Johor & Ors* [2016] 1 CLJ 52; [2016] 7 MLJ 1 to support the contention of the respondent/applicant.

The Appellant's Submissions

[29] On the other hand, the appellant has contended as follows:

(i) that when the learned coroner made a finding that the respondent/applicant had made out a *prima facie* case and granted him leave to issue the committal proceedings against the appellant, she had made an order not a ruling;

(ii) that the learned coroner's decision on 27 August 2019 that granted leave to the respondent/applicant was a decision within s. 3 of the Courts of Judicature Act 1964;

(iii) that the appellant's appeal is competent and not premature as submitted by the respondent/applicant; and

(iv) that the appellant's appeal has merits and ought not be struck out and the right forum to raise this argument is the appeal proper and not in this motion.

[30] In support of this contention, the appellant's counsel referred to the case authorities like *Sitrac Corporation Sdn Bhd v. Lim Siew Eng* [2002] 4 CLJ 463; [2002] 3 MLJ 315 (HC); *Syarikat Tingan Lumber Sdn Bhd v. Takang Timber Sdn Bhd* [2003] 2 CLJ 177; [2003] 2 MLJ 495 (CA); and *Samsudin Ismail & Ors v. Yeoh Oon Theam & Ors And Another Case* [2003] 1 LNS 368; [2003] 6 MLJ 596 (HC).

Analysis And Decision Of This Court

[31] Section 26 of the CJA provides that the appellate criminal jurisdiction of the High Court shall consist of hearing appeals from the subordinate courts and the procedure and rules on appeals to the High Court are given in Chapter XXX of the CPC.

[32] In the instant case, the appellant's appeal to this court is pursuant to s. 307 of the CPC concerning the decision (order) dated 27 August 2019 made by the learned coroner. Since this court has treated the appellant's appeal as a criminal appeal, this court is of the view that the provisions of the CPC in relation to procedure of appeal are therefore applicable.

[33] An appeal lodged under s. 307 of the CPC may be made against any 'judgment, sentence or order' pronounced by a Magistrate or Sessions Court Judge. The phrase 'judgment, sentence or order' means final judgment, sentence or order. An order is a final order in the sense that it is final in effect as in a case of a judgment or a sentence.

[34] This court is aware that although an order may be final in effect, it may not be appealable if it is not made in a criminal cause or matter (see *Ang Gin Lee v. PP* [1991] 2 CLJ 857; [1991] 1 CLJ (Rep) 13; [1991] 1 MLJ 498). A judgment, sentence or order must also be distinguished from a mere procedural ruling as procedural rulings are not appealable (see *PP v. Raymond Chia Kim Chwee & Anor And Another Case* [1985] 2 CLJ 457; [1985] CLJ (Rep) 260*;* [1985] 2 MLJ 436 and *Dato' Seri Anwar Ibrahim v. PP* [2010] 4 CLJ 265).

[35] Therefore, it is pertinent for this court to refer to s. 307 of the CPC on the procedure of appeal which states as follows:

> **Procedure for Appeal**
>
> (1) Except in any case to which section 305 applies and subject to sections 305 and 306 any person who is dissatisfied with any **judgment, sentence or order** pronounced by any Magistrate's Court in a criminal case or matter to which he is a party may prefer an appeal to the High Court against that judgment, sentence or order in respect of any error in law or in fact or on the ground of the alleged excessive severity or of the alleged inadequacy of any sentence by lodging, within fourteen days from the time of the judgment, sentence or order being passed or made, with the clerk of the Magistrate's Court a **notice of appeal** in triplicate addressed to the High Court and by paying at the same time the prescribed appeal fee.

(2) Every notice of appeal shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate.

(3) When a notice of appeal has been lodged the Court appealed from shall make a signed copy of the **grounds of decision** in the case and cause it to be served upon the appellant or his advocate by leaving the said copy at the address mentioned in the notice of appeal or by posting it by registered post addressed to the appellant at the said address.

(4) Within fourteen days after the copy of the grounds of decision has been served as provided in subsection (3), the appellant shall lodge with the clerk of the Magistrate's Court at which the trial was held a **petition of appeal** in triplicate addressed to the High Court.

(5) … (emphasis added)

[36] On the leave granted by the learned coroner, this court also made reference to O. 52 r. 3 of the ROC 2012 which provides as follows:

Application to Court (O. 52, r. 3)

(1) No application to a Court for an order of committal against any person may be made unless **leave** to make such an application has been granted in accordance with this rule.

(2) An application for such **leave** must be made *ex parte* to the Court by a notice of application supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(emphasis added)

[37] Reference was also made to s. 3 of the Courts of Judicature Act 1964 (CJA) on the meaning of 'decision' which provides as follows:

'decision' means *judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the right of the parties.* (emphasis added)

[38] This court acknowledges the difference in the provisions under s. 3 of the CJA in comparison to s. 307(1) of the CPC in relation to 'decision' which is appealable to this court. Under s. 3 of the CJA, the 'decision' appealable means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the right of the parties.

[39] However, under s. 307(1) of the CPC, appeals to the High Court may be filed by any person who is dissatisfied with any judgment, sentence or order pronounced by any subordinate courts. The words "but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the right of the parties" are not there in the said section.

[40] On the meaning of 'decision' under s. 3 of the CJA, the Court of Appeal in *Tan Hoo Eng v. PP* [2019] 1 LNS 893, through Zabariah Mohd Yusof JCA (now FCJ) at p. 12 made these observations:

> [29] Section 3 of the CJA consists of 2 limbs, ie.:
>
> (i) the decision is made during the course of a trial or hearing of any cause or matter; and
>
> (ii) the decision does not dispose of the rights of the parties.
>
> Both these limbs must be applied with equal force and given equal importance (refer to *Datuk Seri Tiong King Sing v. Datuk Seri Ong Tee Keat & Anor* [2014] MLRAU 1; *Syarikat Tingan Lumber Sdn Bhd v. Takang Timber Sdn Bhd* [2003] 2 MLJ 495.

[41] The basis of the application by the respondent/applicant to strike out the appellant's appeal was that the definition of 'decision' under s. 3 of the Courts of Judicature Act 1964 (CJA) demanded an element of finality and as the decision appealed against was the leave granted by the learned coroner, the finality element was absent.

[42] The respondent/applicant has submitted that the said appeal can only be made at the end of the committal proceedings (at the substantive stage) which the learned coroner then will make a final decision whether the appellant (intended/proposed contemnor) is guilty of contempt of court or otherwise.

[43] The respondent/applicant further submitted that the decision to grant leave to the respondent/applicant at the leave stage to initiate committal proceedings against the appellant is not a final decision and hence, not appealable.

[44] This court is of the view that the provisions under s. 307(1) of the CPC are clear and unambiguous. The canon of interpretation is well entrenched that the ordinary word and plain language of the law must be given its plain meaning. In *PP v. Tan Tatt Eek & Other Appeals* [2005] 1 CLJ 713 at p. 747, the Federal Court through Steve Shim CJ (Sabah & Sarawak) gave the guidance on how the courts should interpret statutes:

> *The primary duty of the court is to give effect to the intention of the Legislature in the words used by it. It is a well established canon of interpretation that the intent of the legislature is to be gathered from the words used and that if the words used have not acquired any technical meaning, they should be deemed to have been used in their ordinary meaning.* If the words of the statute are in themselves precise and unambiguous, then no more is necessary that to expound those words in their natural and ordinary sense. The words themselves alone in such cases best declare the intent of the law giver (see *Bindra's Interpretation of Statutes* - 8th Edition). (emphasis added)

[45] Further, *Bindra's Interpretation of Statutes* at p. 395 explains as follows:

> When the language is not only plain but admits of but one meaning the task of interpretation can hardly be said to arise. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provisions. The courts are enjoined to take the words as used by the legislature and to give them the meaning which naturally implies.

[46] The Court of Appeal in *C Vignesh Kumar Chellapah & Anor v. PP* [2019] 8 CLJ 591 through Rhodzariah Bujang JCA at p. 596 gave this explanation:

> [6] It is clear from the said definition in section 3 that there are two instances when a decision of the High Court is not appealable. *The first is if it is made in the course of a trial and the second is when the hearing of the cause or matter does not dispose of the rights of the parties with finality. The clear intention of the Legislature expressed from the words used in the aforesaid section is to filter matters that can go up on appeal. In other words, a cap has been placed by the Legislature to ensure that appeals filed are not frivolous and there would not be undue delay in the disposal of trials by reason of such appeals being filed.* Therefore, even though the order of the court was not made in the course of the trial, but if it does not dispose of the rights of the parties with finality, that decision is still unappealable, that is say, there is no automatic right of appeal for such a decision made by the court. To say otherwise would run afoul of the clear intention of the Legislature as expressed in the said section 3, which as we had stressed earlier, is to filter matters which can be further taken up on appeal before us.
>
> (emphasis added)

[47] Further in *PP v. Mohamed Shahabuddin Mohamed Ali & Ors* [2018] 8 CLJ 535 at pp. 540-541, Mohd Zawawi Salleh JCA (now FCJ) held:

> [13] The word 'decision' is defined in section 3 of the CJA as follows:
>
> > 'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.
>
> [14] *Clearly, the right of appeal against any decision of the High Court in respect of criminal matter does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties (See Syarikat Tingan Lumber Sdn Bhd v. Takang Timber Sdn Bhd [2003] 2 MLJ 495; Dato' Seri Anwar Ibrahim v. PP [2010] 9 CLJ 625; Mohamad Ridzuan bin Zamhor v. PP [2018] 2 AMR 17).*
>
> [15] *The concept of a 'final decision' seems straightforward enough. In a broad term, a final decision is one that disposes of a cause on its merits and leave no question open for judicial determination.* In practice, however, there is undoubtedly some confusion existing as what constitutes a final decision. In this connection, legal precedent is very useful guide in deciding this matter.

[16] In *Saad bin Abas & Anor v. PP* [1999] 1 MLJ 129, the accused were acquitted by the Magistrate's Court at the close of the prosecution case on a charge under section 354 of the Penal Code. On appeal to the High Court, the accused were ordered to enter their defence on the said charge. The accused being dissatisfied with the High Court decision, applied for leave to appeal to the Court of Appeal. The Court of Appeal, however, ruled at page 137, as follows:

> The order of the High Court in the present case for which leave to appeal is sought was that the applicants were to enter their defence. *At the state or making the order, certainly it has no finality in its intent. Only after the close of the defence as a result of that order will there be finality.* Only after the close of the defence will there be a decision to 'affect the event of the appeal', meaning that the defence story will finally determine the result of the whole case which was the purpose of the appeal …
>
> *So, for the purpose of s. 50(2) (of the CJA), this Court has to first ascertain whether the 'decision' of the High Court in ordering the applicants before us to enter their defence was a ruling that had the effect of finally disposing of their rights. Certainly not, and it would only happen after a decision had been made at the close of the defence.* (emphasis added)

[48] The learned judge in the aforesaid case further held that the decisions of the High Courts are appealable only if they have these attributes:

> *They must be final in effect, definitive of the rights of the parties, effectively dispose of a substantial part of the relief claimed in the main proceedings and it does no leave anything to be done in the trial with respect of the merits of the case. In other words, the rule, in general, permits an appeal to be taken only from a final decision which dispose of all the issues presented in the trial.* (emphasis added)

Appellant's Appeal Under The CPC

[49] This court is of the view that the provisions of s. 307 of the CPC are applicable to govern the appellant's appeal. The learned coroner on 27 August 2019 has decided on encl. 16 and gave an order to grant leave to the respondent/applicant to initiate committal proceedings against the appellant.

[50] The said order (perintah) of the learned coroner dated 27 August 2019 is reflected at pp. 16-18 of the record of appeal vol. 1. This is the order which the appellant is dissatisfied with and presently appealing to this court. It is clear that the said order was pronounced by a subordinate court, ie, a Sessions Court Judge sitting as a coroner.

[51] For all intents and purposes, this court is of the view that the said decision made by the learned coroner is within the definition of 'judgment, sentence or order' as stipulated in s. 307(1) of the CPC and therefore the appellant has the right to appeal to this court.

[52] Further, unlike the meaning of 'decision' as envisaged in s. 3 of the CJA, s. 307 of the CPC on the other hand emphasised the words 'judgment, sentence or order' that can be appealed to this court. The existing provisions in s. 307 of the CPC is similar to the provision in s. 3 of the CJA prior to the amendment to the said s. 3 of the CJA in 1998.

[53] The Federal Court in *Ahmad Zubair Hj Murshid v. PP* [2014] 9 CLJ 289 through Raus Sharif PCA (as His Lordship then was) had emphasised on this point when it held at pp. 309-312 as follows:

> [32] With regard to the alternative charges, the complaint by the appellant was that the charges did not contain sufficient particulars which the prosecution intended to prove against the appellant …
>
> [33] *It can be seen from the above that the issues raised by the appellant were preliminary issues ie, basically whether the charges were defective in substance and form. The High Court as stated earlier dismissed the appellant's application to strike out the charges and to have him acquitted and discharged. Clearly the decision of the High Court was on preliminary issue which did not finally dispose of the rights of the parties. It is thus not appealable,* (see *Dato' Seri Anwar Ibrahim v. PP* [1999] 1 CLJ 537; [1999] 1 MLJ 321; *Dato' Seri Anwar Ibrahim v. PP* [2010] 9 CLJ 625; [2010] 6 MLJ 586; *Dato' Seri Anwar Ibrahim v. PP* [2011] 2 CLJ 845; *PP v. Dato' Seri Anwar Ibrahim* [2014] 5 CLJ 805).
>
> [34] We are of the view that the appeal by the appellant to the Court of Appeal and later to this court on a preliminary issue whether the charges against the appellant in the Sessions Court were defective in form and substance was clearly an abuse of the court process. This is especially so when the appellant concurrently has made similar application before the Sessions Court to have the charges preferred against him to be struck out.
>
> [35] *In this respect we wish to point out at the time Karpal Singh & Anor v. PP (supra) was decided, preliminary issues were still appealable to the higher courts as they were deemed as 'decision' made by the court. At the material time under s. 3 of the CJA the term decision was defined as follows:*
>
> > 'decision' means judgment, sentence or order.
>
> [36] *However the CJA was amended in year 1998.* Section 50 of the CJA sets out the jurisdiction of the Court of Appeal to hear and determine criminal appeals as follows …
>
> [37] *The position on the newly amended s. 3 of the CJA has been clearly set out in the decision of this court in the case of Dato' Seri Anwar Ibrahim v. PP [2010] 9 CLJ 625 at page 636 where the court pointed out the underlying reasons for the amendment to the definition of 'decision' in s. 3 of the CJA which came into effect on 31 July 1998 in the following manner:*
>
> > [24] The underlying reason behind the amendment to the definition of 'decision' in s. 3 of the CJA is to stop parties from stalling a trial before the trial court by filing appeal after appeal on rulings made by the trial court in the course of a trial. Apart from

that, the definition of 'decision' by itself is sufficiently clear and it is the court's duty to give effect to the same. Justice demands that cases should move without unnecessary interruption to their final conclusion. That is what the amendment seeks to achieve as evident from the explanatory statement to the Bill which reads:

> 2. Clause 2 seeks to amend section 3 of Act 91.
>
> At the moment, in the course of hearing a case, if the court decides on the admissibility of any evidence or document, the dissatisfied party may file an appeal. If such appeal is filed, the court has to stop the trial pending the decision of the appeal by the superior court. This cause a long delay in the completion of the hearing, especially when an appeal is filed against every ruling made by the trial court. The amendment is proposed in order to help expedite the hearing of cases in trial courts.

[25] Quite apart from the explanatory statement to the Bill the definition of 'decision' by itself, to our mind, is sufficiently clear, and it is the duty of the court to give effect to the same. Justice demands that cases should move without unnecessary interruption to their final conclusion. That is what the amendment seeks to achieve. The right of a party who is aggrieved by a ruling, after all, is not being compromised, as the party can always raise the issue during the appeal, if any, to be filed after the trial process is brought to its conclusion.

…

[39] In this instant case the appellant had applied before the High Court to quash the charges and order an acquittal against him. The application was dismissed. The appellant had also applied before the Sessions Court for the charges to be quashed and prayed that a discharge not amounting to acquittal to be ordered against him. The application was also dismissed. The way we perceive it, the orders of the courts below would connote that the matter should proceed for trial as the charges preferred against the appellant still stand. *Clearly the decision not to strike out the charges before the commencement of the trial as was done in this instant case does not amount to disposal of the rights of the parties. Since the order gives no final decision on the matters in dispute, it is not a 'decision' within the definition under section 3 of the CJA and therefore is not appealable.* (emphasis added)

[54] Therefore, based on the above, this court is of the view that the appellant's appeal is competent.

Preliminary Objection Ought To Be Raised By Respondent/Applicant

[55] This court has ruled on 26 September 2019 that the appellant's appeal is to be treated as a criminal appeal under the provisions of the CPC. As such, this appeal must comply with the procedures as set out in the CPC in particular Part VII Chapter XXX in relation to appeals to the High Court.

[56] This court further views that the respondent/applicant ought to have raised a preliminary objection on the ground that the appeal by the appellant is an incompetent appeal as the decision of the learned coroner was not a final order and that it is not appealable.

[57] The application by the respondent/applicant to strike out the appellant's appeal under O. 18 r. 19 of the ROC 2012 is misplaced and ought not to be allowed by this court. The explanatory notes in the *Malaysian Court Practice LexisNexis* 2017 state that the courts will only dismiss action:

(i) in plain and obvious cases;

(ii) where there is no reasonable cause of action;

(iii) to avoid unnecessary trial which had no prospects of success; or

(iv) the claims are frivolous or vexatious or an abuse of process of court or the defences are unarguable.

(see *Duta Arif Sdn Bhd & Ors v. Charterfield Development Corporation Sdn Bhd & Ors* [2007] 1 LNS 415; [2008] 6 MLJ 139; *Alliance Investment Bank Sdn Bhd v. Good Quantum Sdn Bhd & Ors* [2011] 4 CLJ 861; [2010] MLJU 1679; *Nescajaya Sdn Bhd v. Suairah Parigula & Ors* [2011] 1 LNS 527; [2011] 9 MLJ 774; *Cepatwawasan Group Bhd & Anor v. Tengku Dato' Kamal Ibni Sultan Sir Abu Bakar & Ors* [2008] 2 CLJ 620; [2008] 2 MLJ 915; *Sivakumar Varatharaju Naidu v. Ganesan Retanam* [2010] 9 CLJ 825; [2011] 6 MLJ 70).

[58] Having perused all the above, this court is of the view that the appellant's appeal did not fall under any of the criteria, thus the respondent/applicant's application is devoid of any merit.

[59] On 'preliminary objection' mentioned above, this court made reference to the case of *Tan Hoo Eng v. PP* (*supra*) where the Court of Appeal through Zabariah Mohd Yusof JCA (now FCJ) allowed the preliminary objection of the respondent and dismissed the appellant's appeal. The said dismissal was on the basis that the decision of the learned Judicial Commissioner (JC) was not a final decision which finally disposed of the rights of the appellant and is not appealable as it is not a decision envisaged under s. 3 of the Courts of Judicature Act 1964.

[60] Further, the said learned judge in the aforementioned case when dealing with the 'preliminary objection' had considered the principles stated in *Dato' Seri Anwar Ibrahim v. PP* (*supra*); *Ahmad Zubair Hj Murshid v. PP* (*supra*) and *Karpal Singh Ram Singh v. PP* (*supra*) and decided as follows:

> [48] Given the aforesaid, unanimously we are of the view that the decision of the learned JC in dismissing the NOM was not a final decision which disposed of the final rights of the appellant. The final rights of the appellant would only be disposed of upon the trial court deciding on the charge against the appellant. The decision by the learned JC dated 30.8.2018 is thus not appealable.

[49] **Therefore the appeal herein is an incompetent appeal. The Preliminary Objection by the respondent/prosecution is allowed and the appeal is dismissed.** (emphasis added)

[61] For all intents and purposes, this court is of the view that even if the respondent/applicant raised the preliminary objection, this court still find that such preliminary objection is baseless and will be dismissed.

The Learned Coroner Decided On Merits

[62] Despite having decided on the two issues hereinbefore, this court will now consider the arguments put forth by both parties that relied on the meaning of 'decision' in s. 3 of the CJA. This court is of the view that the decision made by the learned coroner in allowing leave for committal proceedings as prayed for in encl. 16 was indeed a final order that disposed a cause or matter on its merits. Therefore, this court finds that learned counsel for the appellant has rightly submitted that it was a 'final order' made and not a 'ruling' in relation to encl. 16.

[63] This court is also of the view that the decision of the learned coroner was not on preliminary issues in relation to the leave's application. Rather, the learned coroner had decided on merits of the application and found that a *prima facie* case of contempt of court was proven and that the said leave under O. 52 r. 3(1) and (2) of the ROC 2012 ought to be granted to the respondent/applicant. Subsequently, the learned coroner's decision that there was a *prima facie* case and leave was therefore granted to initiate committal proceedings against the appellant was a final order.

[64] This court agrees with the finding of the Federal Court in *Karpal Singh Ram Singh v. PP* [2012] 5 CLJ 537, through Suriyadi Halim Omar FCJ at pp. 549-550 that made these observations:

[19] A scrutiny of the scope of the term 'decision' in s. 3 of the CJA reveals that its definition does not extend to the types of 'judgments or orders' which can be termed as 'interlocutory'. *In other words, if a judgment or order is not final, in the sense that it does not finally dispose of the rights of the parties in the trial, then it would not fall within the definition of the word 'decision' under section 3 of the CJA and thus not appealable.* To quote Arifin Zakaria CJM (as His Lordship then was) in *Dato' Seri Anwar Ibrahim v. PP* [2010] 9 CLJ 625 at 634:

> The term 'interlocutory' used therein is specifically in reference to a civil matter as opposed to a criminal matter (see para 501 of *Halsbury Laws of England*, 4th edition Volume 26). It includes an order made before and after judgment in a matter before the court. *Whereas what s. 3 of the CJA seeks to exclude from the term 'decision' is a ruling made in the course of a trial or hearing which does not finally dispose of the rights of the parties. In other words, the ruling must by*

A *definition be made in the course of a trial or hearing and not before or after as envisaged in the definition of 'interlocutory'.* In fact, in *Dato' Seri Anwar Ibrahim v. PP* [2010] 4 CLJ 565, this court was asked to decide whether an order made by the trial judge pursuant to s. 51 and or s. 51A of the Criminal Procedure Code is appealable. In that case, this Court held that the order was a final order as it finally B disposed of the rights of the parties and therefore it was appealable. Further, the Court held that the order was not made in the course of a trial. For that reason, the order made by the trial judge does not fall within the word 'decision' as defined in s. 3 of the CJA. No doubt that the application under s. 51 and/or s. 51A is an 'interlocutory' application as defined in Halsbury. C Therefore it is highly inaccurate to say that in a criminal trial, all decisions on interlocutory applications are not appealable.

[20] A dissatisfied party is never deprived either of his right to appeal after the conclusion of a trial, in the event he feels aggrieved with the ruling made in the course of the trial, as that supposed error could be raised in D the appeal proper. Again Arifin Zakaria CJ in *Dato Seri Anwar Ibrahim v. PP* (*supra*) opined:

> The right of a party who is aggrieved by a ruling, after all, is not being compromised, as the party can always raise the issue during the appeal, if any, to be filed after the trial process is brought to E its conclusion. (emphasis added)

[65] It is pertinent to note that since the learned coroner has decided on merits of encl. 16, this court is of the view that the order granting leave made by the learned coroner was final and therefore appealable to this court.

F **The Learned Coroner Made An Order To Grant Leave And Not A Ruling On Encl. 16**

[66] In further consideration of the matter, this court refers to the provision of s. 3 of the CJA that defines 'decision' to mean judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the G parties. This court further opines that in granting leave to the respondent/ applicant, the learned coroner was making an order which finally disposed the rights of the appellant as far as the application for leave was concerned.

[67] This court acknowledges that the learned coroner had made a finding H that a *prima facie* case of contempt was proven by the respondent/applicant and therefore leave was granted to the respondent/applicant to initiate committal proceedings against the appellant. In *PP v. Ng Wing Fau & Ors* [2018] 9 CLJ 707, Mohd Zawawi Salleh JCA (now FCJ) stated:

I

[18] The word 'judgment' is not defined in the Criminal Procedure Code. *The Halsbury's Laws of England*, Hailsham Ed, Vol IX, paras 260-265 *explains it as a final order in a trial terminating in the conviction or acquittal of the accused.* In *Chhotey Lal v. Tinkey Lal* [1935] AIR 815, the court regarded that an order in the nature of a judgment is one which is passed on full enquiry and after hearing both parties. In *Ayubbhai Abdulbhai Shah v. Gabha Bechar & Ors* [1994] GLH (1) 447, the Gujara High Court, has held as under:

> "The aforesaid discussion from the Supreme Court decision read along with the reference to *Halsbury's Laws of England* makes it quite clear that the order dismissing the matter for default is not a decision on merits. The judgment is nothing if not a decision given by a competent Court on merits of a case in respect of a lis between the parties" (see also *Marzuki b Mokhtar v. PP* [1981] 2 MLJ 155, *Md Alwin Mustapa & Ors v. PP* [1995] 5 CLJ 417, *PP v. Arab Malaysia Finance Bhd* [2003] 4 CLJ 423).

[19] *Thus, by using the proper approach of analogy from the decided case from other jurisdictions, the expression 'judgment' must necessarily mean a considered order on merits and not an order of dismissal for default* … (emphasis added)

[68] Premised on the above reasons, the decision of the learned coroner in granting the said leave is an order and not a ruling in the course of a trial and therefore this court held that the said decision is appealable.

The Said Leave May Be Set Aside On Application By The Intended/ Proposed Contemnor

[69] Notwithstanding the preceding, this court is also of the view that the said leave may be set aside on application by the applicant (intended/ proposed contemnor) as shown in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849 where Arifin Zakaria CJ for the Federal Court at pp. 854-867 states as follows:

> [1] On 19 May 2011, this court gave leave to the applicants to commence committal proceedings against the respondents. The leave was granted pursuant to O. 52 r. 2(2) of the Rules of the High Court 1980 ("the RHC") read together with r. 3 of the Rules of the Federal Court ("the RFC"). The committal proceeding was set down for hearing before us on 14 December 2011. *However, the respondents had, in the meantime, applied for the leave order to be set aside. Since leave was granted by us on an ex parte basis, it is within the inherent power of this court to revoke the same if it is of the view that the original leave was granted under a misapprehension upon new matters being placed before it.* (See Lord Denning MR in *Becker v. Neol & Anor* [1971] 1 WLR 803]. Having heard the parties, we allowed the respondents' application and set aside our earlier order. We now give our reasons for the decision.
>
> …
>
> [57] *For the above reasons, we allowed the respondents' application to set aside the leave order issued against them and hence, the motion for committal against the respondents is accordingly struck out with costs.* (emphasis added)

[70] This court further opines that the said leave granted by the learned coroner may be set aside either on appeal or by an application to set aside the said leave by the intended/proposed contemnor if the requirements to strictly comply the provisions of O. 52 r. 3(1) and (2) of the ROC 2012 were not fulfilled by the respondent/applicant.

[71] It must be noted that O. 52 r. 3(2) of the ROC 2012 mandated that the application for committal is to be supported by a statement describing amongst others, the person sought to be committed, the grounds on which he is alleged to be in contempt, and an affidavit verifying the facts relied on in the statement.

[72] Further, the alleged act of contempt must be adequately described and particularised in detail in the statement itself. As such an accompanying affidavit is only to verify the facts relied in that statement and cannot add facts to it nor any deficiency in the statement can be supplemented or cured by any further affidavit at a later time.

[73] The intended/proposed contemnor must at once be given full knowledge of what charge he is facing so as to enable him to meet the charge. This must be done within the ambit of the statement itself. The same approach was taken by the then Supreme Court in *Arthur Lee Meng Kwang v. Faber Merlin (M) Bhd & Ors* [1986] 2 CLJ 109; [1986] CLJ (Rep) 58 and *Sykt M Mohamed v. Mahindapal Singh Joginder Singh & Ors* [1991] 1 CLJ 582; [1991] 4 CLJ (Rep) 16.

[74] Similarly in *Woodsville Sdn Bhd v. Tien Ik Enterprise Sdn Bhd & Ors And Another Appeal* [2010] 2 CLJ 858; [2009] 3 MLJ 101 at p. 204, the Court of Appeal affirmed the High Court's decision to set aside an *ex parte* leave to commence committal proceedings on the ground that there was no *prima facie* contempt of court by the second respondent.

[75] Further in *Dewan Perniagaan Melayu, Malaysia, Negeri Johor v. Menteri Besar Johor & Ors* [2016] 1 CLJ 52; [2016] 7 MLJ 1, Mohd Nazlan Ghazali JC (as His Lordship then was) at p. 65 (CLJ); p. 17 (MLJ) on the setting aside of leave states as follows:

> [26] Even cases which involve setting aside of leave such as the Supreme Court decision in *Arthur Lee Meng Kwang v. Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193; the Federal Court case of *Tan Sri Dato' (Dr) Rozali Ismail & Ors* and the Court of Appeal decision in *Tan Sri G Darshan Singh v. Tetuan Azam Lim & Pang* [2013] 5 MLJ 541; [2013] 1 CLJ 1060 are concerned primarily with issues on the sufficiency of disclosure and contents of the requisite O. 52 statements, which are clearly matters within the framework of O. 52 of the ROC 2012.

[76] On the similar issue of setting aside the leave, this court agrees with the decision of the Federal Court in *PCP Construction Sdn Bhd v. Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener)* [2019] 6 CLJ 1 which dismissed the application by the intended/proposed contemnor to set aside the *ex parte* leave for committal.

[77] Therefore based on the foregoing reasons, this court is of the view that the leave for committal proceedings granted by the learned coroner may be set aside either on appeal or by an application to set aside the said leave for non-compliance of the strict requirements under O. 52 r. 3 of the ROC 2012.

Conclusion

[78] Having deliberated all the aforesaid, this court concludes that the appeal by the appellant is competent and hence, appealable.

[79] Accordingly, the application by the respondent/applicant to strike out the appellant's appeal (encl. 16) is hereby dismissed and that the appellant's appeal to proceed forthwith.